

HOUSE

AMENDMENT NO.____

Offered by

____ of _____

1 AMEND House Committee Substitute for House Bill No. 394, Page 7,
 2 Section 383.165, Line 4, by inserting after all of said line the
 3 following:

4 "383.300. As used in sections 383.300 to 383.321, the
 5 following terms mean:

6 (1) "Director", the director of the department of
 7 insurance;

8 (2) "Fund", the Missouri health care stabilization fund
 9 established under sections 383.300 to 383.321;

10 (3) "Health care provider", includes physicians, dentists,
 11 clinical psychologists, pharmacists, optometrists, podiatrists,
 12 registered nurses, physicians' assistants, chiropractors,
 13 physical therapists, nurse anesthetists, anesthetists, emergency
 14 medical technicians, and hospitals; but shall not include any
 15 nursing service or nursing facility conducted by and for those
 16 who rely upon treatment by spiritual means alone in accordance

Action Taken _____

Date _____

1 with the creed or tenets of any well-recognized church or
2 religious denomination;

3 (4) "Insurer", any insurance company, association,
4 exchange, or legal entity authorized to issue policies of medical
5 malpractice insurance in this state;

6 (5) "Medical malpractice insurance", insurance coverage
7 against the legal liability of the insured and against loss,
8 damage, or expense incident to a claim arising out of the death
9 or injury of any person as a result of the negligence or
10 malpractice in rendering professional service by any health care
11 provider.

12 383.303. 1. There is hereby created in the state treasury
13 the "Missouri Health Care Stabilization Fund". Membership fees
14 and premium surcharges collected under section 383.312 shall be
15 deposited in the fund. Notwithstanding the provisions of section
16 33.080, RSMo, to the contrary, moneys in the Missouri health care
17 stabilization fund shall not revert to the general revenue fund.
18 Interest accruing to the fund shall be part of the fund. Moneys
19 in the fund shall be invested and reinvested in the same manner
20 as provided by law for the investment of other state funds in
21 interest-bearing investments. All expenses of collecting,
22 protecting, and administering the fund shall be paid from the
23 fund.

24 2. The Missouri health care stabilization fund shall be

1 used for the purpose of paying that portion of a medical
2 malpractice claim, settlement, or judgment which is in excess of
3 the limits expressed in section 383.318 or the maximum liability
4 limits for which the health care provider is insured, whichever
5 limit is greater. The fund is liable only for payment of claims
6 against licensed health care providers in compliance with the
7 provisions of sections 383.300 to 383.321 and includes reasonable
8 and necessary expenses incurred in payment of claims and the
9 fund's administrative expense. The fund shall not be liable for
10 damages for injury or death caused by an intentional crime
11 committed by a health care provider or an employee of a health
12 care provider, whether or not the criminal conduct is the basis
13 for a medical malpractice claim. The fund shall have no
14 obligation for the payment of punitive damages rendered in any
15 judgment. The state shall not be responsible for any costs,
16 expenses, liabilities, judgments, or other obligations of the
17 fund.

18 3. The maximum amount recoverable under the Missouri health
19 care stabilization fund for any single claim under sections
20 383.300 to 383.321 shall not exceed eight hundred thousand
21 dollars pursuant to any one judgment or settlement for any party
22 against a health care provider, subject to an aggregate
23 limitation for all judgments or settlements arising from all
24 claims made in one year in an amount of two million four hundred

1 thousand dollars for any health care provider.

2 383.306. 1. There is hereby created within the department
3 of insurance the "Health Care Stabilization Board", which shall
4 be composed of the director and nine members appointed by the
5 governor with the advice and consent of the senate. The board
6 shall be composed of:

7 (1) One member who is licensed to practice medicine and
8 surgery in Missouri who is a doctor of medicine and who is on a
9 list of nominees submitted to the director by an organization
10 representing Missouri's medical society;

11 (2) One member who is a doctor of osteopathy and who is on
12 a list of nominees submitted to the director by an organization
13 representing Missouri doctors of osteopathy;

14 (3) One member who is a licensed nurse in Missouri and who
15 is on a list submitted to the director by an organization
16 representing Missouri nurses;

17 (4) One member who is a representative of Missouri
18 hospitals and who is on a list of nominees submitted to the
19 director by an organization representing Missouri hospitals;

20 (5) Two members who are insurance representatives and who
21 are on a list of nominees submitted to the director by the
22 insurance industry;

23 (6) Two members who are attorneys that handle medical
24 malpractice and who are on a list of nominees submitted to the

1 director by an organization representing Missouri attorneys;

2 (7) One member of the general public appointed by the
3 governor who is unaffiliated with the insurance or health care
4 industries or the medical or legal professions; and

5 (8) The director.

6 2. The board is created to manage and operate the Missouri
7 health care stabilization fund. The appointed members shall
8 serve for a term of six years. Each member shall serve until a
9 successor is appointed and qualified. The board shall meet at
10 the call of the director or a majority of the members but in any
11 event it shall meet at least once a year. A majority of the
12 board members shall constitute a quorum for the transaction of
13 any business of the board. The affirmative vote by a majority of
14 the quorum present at a duly called meeting after notice is
15 required to exercise any function of the board.

16 3. The board may promulgate any regulations necessary to
17 carry out the provisions of sections 383.300 to 383.324. Any
18 rule or portion of a rule, as that term is defined in section
19 536.010, RSMo, that is created under the authority delegated in
20 this section shall become effective only if it complies with and
21 is subject to all of the provisions of chapter 536, RSMo, and, if
22 applicable, section 536.028, RSMo. This section and chapter 536,
23 RSMo, are nonseverable and if any of the powers vested with the
24 general assembly pursuant to chapter 536, RSMo, to review, to

1 delay the effective date or to disapprove and annul a rule are
2 subsequently held unconstitutional, then the grant of rulemaking
3 authority and any rule proposed or adopted after August 28, 2005,
4 shall be invalid and void.

5 4. When a vacancy occurs in the membership of the board
6 created by this section, the governor, with the advice and
7 consent of the senate, shall appoint a successor of like
8 qualifications from a list of three nominees submitted to the
9 director by the professional society or association prescribed by
10 this section. Whenever a vacancy occurs in the membership of the
11 board created by this section for any reason other than the
12 expiration of a member's term of office, the governor, with the
13 advice and consent of the senate, shall appoint a successor of
14 like qualifications to fill the unexpired term. In each case of
15 a vacancy occurring in the membership of the board, the director
16 shall notify the professional society or association required for
17 the vacant position and request a list of three nominations from
18 which to make the appointment.

19 5. The board shall develop a plan of operation for the
20 efficient administration of the fund consistent with the
21 provisions of sections 383.300 to 383.321. The fund shall
22 operate pursuant to a plan of operation which shall provide for
23 the economic, fair, and nondiscriminatory administration and for
24 the prompt and efficient provision of excess medical malpractice

1 insurance and which may contain other provisions including, but
2 not limited to, assessment of all members for expenses, deficits,
3 losses, commissions arrangements, reasonable underwriting
4 standards, acceptance and cession of reinsurance appointment of
5 servicing carriers, and procedures for determining the amounts of
6 insurance to be provided by the Missouri health care
7 stabilization fund. The plan of operation and any amendments to
8 the plan are subject to the approval of the director. If the
9 board fails to develop a plan of operation within the time frame
10 established by the director, the director or the director's
11 designee shall develop the plan of operation for the fund.

12 6. The board may appoint such additional employees, and
13 provide all office space, services, equipment, materials and
14 supplies, and all budgeting, personnel, purchasing, and related
15 management functions required by the board in the exercise of the
16 powers, duties, and functions imposed or authorized by sections
17 383.300 to 383.321.

18 7. The department of insurance shall:

19 (1) Provide technical and administrative assistance to the
20 board with respect to administration of the fund upon request of
21 the board; and

22 (2) Provide such expertise as the board may reasonably
23 request with respect to evaluation of claims or potential claims.

24 383.309. All Missouri licensed health care providers shall

1 participate in the fund and shall remit to the board the
2 appropriate membership fees and premium surcharges as are
3 required by section 383.312 on or before the provider's
4 membership anniversary date.

5 383.312. 1. All health care providers shall participate in
6 the Missouri health care stabilization fund and shall pay annual
7 membership fees. The board, by rule, shall set the membership
8 fees. The rule shall provide that fees may be paid annually or
9 in semiannual or quarterly installments.

10 2. In addition to the membership fees delineated in
11 subsection 1 of this section, the board shall levy an annual
12 premium surcharge on each participating health care provider who
13 has obtained a policy meeting the requirements of section 383.315
14 and upon each self-insurer. The surcharge shall be determined by
15 the board based upon sound actuarial principles, using data
16 obtained from Missouri experience if available. The amount of
17 the surcharge shall be adequate for the payment of claims and
18 expenses from the Missouri health care stabilization fund. The
19 amount of the surcharge shall be reasonable and not unfairly
20 discriminatory.

21 3. The surcharge shall be collected on the same basis as
22 premiums by each insurer from the health care provider. The
23 surcharge with accrued interest shall be due and payable within
24 thirty days after the premiums for medical malpractice insurance

1 have been received by the insurer from the health care provider
2 in Missouri.

3 4. If the annual premium surcharge is collected but not
4 paid within the time limit specified in subsection 3 of this
5 section, the certificate of authority of the insurer, risk
6 manager, or surplus lines agents shall be suspended until the
7 annual premium surcharge is paid.

8 5. Membership in the fund is contingent upon the
9 participating member making timely payment of all membership fees
10 and all premium surcharges.

11 6. Self-insureds shall be eligible for membership in the
12 fund upon compliance with the requirements of the board and shall
13 pay similar membership fees and premium surcharges as the
14 members. The surcharge for self-insureds shall be in an amount
15 determined by the board. The amount of the surcharge imposed on
16 the self-insured shall be in an amount comparable to what a
17 health care provider would be required to pay if the provider's
18 surcharge was based upon a policy of medical malpractice
19 insurance.

20 383.315. 1. All books, records, and audits of the fund are
21 open for reasonable inspection to the general public.

22 2. On or before December thirty-first of each year the
23 state auditor shall audit the records of the fund and shall
24 furnish an audited financial report to all fund participants, the

1 department of insurance, and the general assembly.

2 383.318. 1. All health care providers shall participate in
3 the Missouri health care stabilization fund and shall either
4 insure and keep insured the health care provider's liability by a
5 policy of medical malpractice insurance issued by an insurer
6 authorized to do business in this state or shall qualify as a
7 self-insurer. Qualification as a self-insurer is subject to
8 conditions established by the board. The board may establish
9 conditions that permit a self-insurer to self-insure for claims
10 that are against employees who are health care providers and that
11 are not covered by the fund.

12 2. The liability limits for a policy of medical malpractice
13 insurance required by subsection 1 of this section shall not be
14 less than two hundred thousand dollars per claim, and shall not
15 be less than six hundred thousand dollars for all claims in any
16 one reporting year.

17 3. Each insurance company issuing medical malpractice
18 insurance policies that meet the requirements of this section
19 shall, at the times prescribed by the director, file with the
20 director in a form prescribed by the director, a certificate of
21 insurance on behalf of the health care provider upon original
22 issuance and each renewal.

23 4. Each self-insured health care provider furnishing
24 coverage that meets the requirements of this section shall, at

1 the time and in a form prescribed by the board, file with the
2 board a certificate of self-insurance and a separate certificate
3 of insurance for each additional health care provider covered by
4 the self-insured plan.

5 383.321. 1. A person filing a claim may recover from the
6 fund only if the health care provider or the employee of the
7 health care provider has coverage under the fund, the fund is
8 named as a party in the action, and the action against the fund
9 is commenced within the same time limitation within which the
10 action against the health care provider or employee of the health
11 care provider must be commenced.

12 2. If, after reviewing the facts upon which the claim or
13 action is based, it appears reasonably probable that damages paid
14 will exceed the limits provided in section 383.318, the fund may
15 appear and actively defend itself when named as a party in an
16 action against a health care provider, or an employee of a health
17 care provider, that has coverage under the fund. In such action,
18 the fund may retain counsel and pay out of the fund attorney fees
19 and expenses including court costs incurred in defending the
20 fund. The attorney or law firm retained to defend the fund shall
21 not be retained or employed by the board to perform legal
22 services for the board of other than those directly connected
23 with the fund. Any judgment affecting the fund may be appealed
24 as provided by law.

1 3. It shall be the responsibility of the insurer or self-
2 insurer providing insurance or self-insurance for a health care
3 provider who is also covered by the fund to provide an adequate
4 defense of the fund on any claim filed that may potentially
5 affect the fund with respect to such insurance contract or self-
6 insurance contract. The insurer or self-insurer shall act in
7 good faith and in a fiduciary relationship with respect to any
8 claim affecting the fund. No settlement exceeding an amount
9 which could require payment by the fund may be agreed to unless
10 approved by the board.

11 4. A person who has recovered a final judgment or a
12 settlement approved by the board against a health care provider,
13 or an employee of a health care provider that has coverage under
14 the fund, may file a claim with the board to recover that portion
15 of such judgment or settlement which is in excess of the limits
16 provided in section 383.318 or the maximum liability limit for
17 which the health care provider is insured, whichever limit is
18 greater. In no event, however, shall the amount recoverable from
19 the fund exceed the amounts established under subsection 3 of
20 section 383.303. Payments shall be made from money collected and
21 paid into the fund and from interest earned thereon.

22 5. Claims filed against the fund shall be paid in the order
23 received within ninety days after filing unless appealed by the
24 fund. If the amounts in the fund are not sufficient to pay all

1 of the claims, claims received after the funds are exhausted
2 shall be immediately payable the following year in the order in
3 which they were received.

4 6. The board may bring an action against an insurer, self-
5 insurer, or health care provider for failure to act in good faith
6 or breach of fiduciary responsibility."; and

7 Further amend said title, enacting clause and intersectional
8 references accordingly.